

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
(August 13, 1999 Session)

**FILED**

March 1, 2000

Cecil Crowson, Jr.

MADISON COUNTY CHANCERY Court Clerk

NO. W1998-00280-SC-WCM-CV

HON. JOE C. MORRIS

**BARRY L. BLACKWELL,**

Plaintiff/Appellee,

v.

**MADISON COUNTY SHERIFF'S  
DEPARTMENT,**

Defendant/Appellant.

**FOR THE APPELLANT:**

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**FOR THE APPELLEE:**

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**MEMORANDUM OPINION**

**Members of Panel:**

Justice Janice M. Holder  
Senior Judge F. Lloyd Tatum  
Senior Judge L. T. Lafferty

**REVERSED AND DISMISSED**

**L. T. LAFFERTY, SENIOR JUDGE**

## OPINION

This workers' compensation appeal has been referred to the Special Worker's Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This case arises out of heart problems suffered by a sheriff's deputy. The trial court found that the plaintiff was entitled to the statutory presumption in Tennessee Code Annotated § 7-5-201(a)(1) allowing the court to presume that a law enforcement officer's heart problems are work-related. The trial court found that the plaintiff suffered a 30 percent permanent partial disability to the body as a whole from this injury. Further, the trial court found that a bomb scare on June 3, 1996, was a precipitating factor that caused the plaintiff's problems.

The defendant appeals the decision of the trial court, alleging that the court erred in finding that the plaintiff was entitled to the statutory presumption of causation. The plaintiff argues that the trial court correctly found that the presumption applies. He further argues that, even without the presumption, the preponderance of the evidence establishes that the plaintiff's injury arose out of and in the course of his employment with the defendant.

Review of the findings of fact made by the trial court is *de novo* upon the record, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988). However, considerable deference must be given the trial court, who has seen and heard the witnesses, especially where issues of credibility and weight of oral testimony are involved. *Jones v. Hartford Accident & Indem. Co.*, 811 S.W.2d 516, 521 (Tenn. 1991).

After a review of the entire record, briefs of the parties and applicable law, we REVERSE the trial court's judgment.

### FACTUAL BACKGROUND

At trial, Barry Lynn Blackwell ("the plaintiff") testified that he was employed by the Madison County Sheriff's Department ("the Department"). He stated that he is a high school graduate and attended Jackson State Community College for two years but did not earn a degree. During his eighteen years of employment with the Department, the plaintiff

has served as a patrolman, narcotics officer, and has risen to the rank of lieutenant. Prior to his employment by the Department, the plaintiff took and passed a physical examination. The plaintiff denied any major health problems prior to June of 1996. He has never smoked, consumed alcohol, been hypertensive, or been diagnosed with diabetes or high cholesterol. Of eleven aunts and uncles, only two uncles suffered from heart problems. The plaintiff described his job duties as highly stressful, including attending to the scene of fatal automobile accidents, answering domestic dispute calls, making arrests of violent or intoxicated offenders, and searching for fleeing suspects. As a lieutenant, the plaintiff is responsible for the actions and safety of the officers he supervises.

On June 3, 1996, the Department received a call from a couple who believed that a wrapped package that had been delivered to their home was a bomb from a relative. The couple left the package on their porch and called the Department. The plaintiff immediately sent two officers to the scene with instructions not to touch the box and to stay off the radios to prevent inadvertently setting off an explosive device. The officers were to report back to the plaintiff on the telephone to apprise him of the situation. In the meantime, the plaintiff was attempting to contact bomb technicians from the local police department. When one of the officers called from the scene, he informed the plaintiff that he had opened the package, which contained cookies. The plaintiff became extremely upset by his officers' violation of orders in such a life-threatening manner. By the end of his shift, the plaintiff did not feel well and had no energy. Once at home, he felt pain, tingling, and numbness in his shoulders that traveled down both arms and up into his neck, face, and chest. The symptoms abated after approximately one hour.

The plaintiff testified that he did not feel well at work the next day or when working around the house that evening. On June 5, 1996, the plaintiff began to have chest, shoulder, and neck pain that radiated into his jaw after changing a heater hose on his truck at home. These symptoms sent him to the hospital on June 6. He testified that he had a heart attack on June 7 followed by open-heart surgery. He was off work for approximately two and one-half months during his recovery. The plaintiff eventually returned to work in the same position but at a slower pace than before.

On cross-examination, the plaintiff admitted that he sought treatment for chest pain, lightheadedness, anxiety, and a clammy feeling in August of 1994. He did not remember receiving a secondary diagnosis of hypertension in February of 1995 but admitted experiencing shortness of breath after exercising for a couple of years prior to the bomb scare incident in June, 1996, for which he sought medical attention. The plaintiff had also been experiencing indigestion symptoms for several months prior to the bomb scare. He

connected these symptoms to the coronary artery disease that was diagnosed in June of 1996.

The depositions of five doctors were offered at trial. Dr. David L. Garey, the plaintiff's family practice physician at The Jackson Clinic, first saw the plaintiff in September of 1995 with symptoms unrelated to his cardiac condition. Dr. Garey saw the plaintiff approximately five other times prior to seeing him in the hospital with chest pain in June, 1996. After bypass surgery was performed by Dr. Alanson R. Spalding, III, the plaintiff had follow-up visits with Dr. Garey on July 2 and August 6, 1996. At that time, the plaintiff was doing well and exercising. Blood tests revealed that the plaintiff's "good cholesterol," or HDL, level was low and his triglyceride level was high, indicating an increased, but not particularly significant, susceptibility to heart disease. Dr. Garey released the plaintiff to go back to work on August 26, 1996. In February of 1997, the plaintiff's heart catheterization was completely normal, and Dr. Garey attributed the plaintiff's complaints of chest pain at that time to anxiety. The doctor testified that he did not put any restrictions on the plaintiff's work activities. He attributed the plaintiff's arteriosclerotic blockage of heart vessels to lipid abnormalities and secondary risk factors, such as the fact that the plaintiff is male, was overweight, and has distant family history of heart disease. It was Dr. Garey's opinion that work-related stress did not play any role in the development of the plaintiff's cardiovascular disease, which occurs slowly over many years. He stated that the bomb scare incident caused the plaintiff to have chest discomfort but did not cause his heart disease or advance his underlying condition in any way. The doctor did not give a rating for any permanent impairment.

Dr. Tony Nelson Phillips, a cardiologist at The Jackson Clinic, saw the plaintiff in the hospital after he was admitted for chest, arm, and jaw pain after changing the heater hose in June, 1996. Cardiac catheterization revealed coronary artery disease. Because the plaintiff began to have unstable angina at rest, a condition Dr. Phillips termed as "pre-infarction," bypass surgery was performed immediately. He stated that the plaintiff did not have a heart attack and felt that the plaintiff's family history and low HDL level were risk factors in the development of plaintiff's coronary artery disease. Dr. Phillips confirmed that the plaintiff's post-operative catheterization in February of 1997 showed no problems. It was Dr. Phillips opinion that the plaintiff's stressful job activities did not cause his coronary artery disease, although he stated that stress could trigger angina in a person with arteriosclerosis. He did not place any restrictions on the plaintiff's job activities. Dr. Phillips also stated that the bomb scare did not cause the onset of the plaintiff's angina hours afterwards.

Dr. Alanson R. Spalding, III, the plaintiff's cardiac surgeon, testified in his deposition that he first saw the plaintiff in the hospital on June 7, 1996, for an emergency coronary bypass grafting. Dr. Spalding's medical records reveal that Dr. Phillips asked him to perform the operation because he thought the plaintiff had an impending myocardial infarction. Dr. Spalding did not place any work restrictions on the plaintiff after six to twelve weeks post-surgery and did not assign him an impairment rating; however, he did not review the AMA Guides in his decision not to award an impairment rating. It was also Dr. Spalding's opinion that the plaintiff's coronary artery disease was not caused by his employment as a sheriff's deputy.

Dr. T. James Humphreys, also a cardiologist with The Jackson Clinic, saw the plaintiff on July 9, 1996, during a follow-up visit after the bypass surgery. He found that the plaintiff was doing well after surgery. On September 17, Dr. Humphreys saw the plaintiff after he had been admitted to the emergency room with chest pain, which Dr. Humphreys felt was not heart-related. In February of 1997, the plaintiff complained of shortness of breath and tingling in his arms, but test results showed no problems. When asked whether the plaintiff's job contributed to his heart problems or aggravated them, Dr. Humphreys stated that it was probable that long-term job stress triggered the plaintiff's cardiac event, although his employment did not cause the underlying coronary artery disease. However, when presented with the fact that the plaintiff's symptoms had subsided after the bomb scare and resurfaced several days later after he changed the heater hose on his truck, Dr. Humphreys said it was less than 50 percent likely that the plaintiff's work activities precipitated the cardiac event. He mentioned several risk factors that the plaintiff had for heart disease, including a family history of early heart disease, hypertension, and the plaintiff's Type A personality, which means the individual is easily excitable and reacts to stress in a negative way.

At the request of counsel, the plaintiff's medical records were evaluated by Dr. Pervis Milnor, a cardiologist. He did not actually examine or speak with the plaintiff. It was Dr. Milnor's opinion that the plaintiff's duties as a law enforcement officer contributed significantly to the development and progression of his coronary artery disease. He opined that the bomb scare was a stressful precipitating factor in the development of the plaintiff's cardiac symptoms and heart attack necessitating surgery. Dr. Milnor did not refer to any specific scientific study to support his opinion. Using the AMA Guides, Dr. Milnor rated the plaintiff with a Class 2 permanent impairment of 10 to 29 percent to the body as a whole. He stated that the medical records refer to an electrocardiogram performed on June 7 that suggested an inferior wall infarction, but he stated that the plaintiff's symptoms on that day

fell within the definition of intermediate coronary syndrome<sup>1</sup>. Dr. Milnor admitted that there was no evidence in the plaintiff's medical records that he suffered a heart attack on June 3. The doctor also agreed that the more time that passes between the stressful event and the symptoms which require medical attention, the less certain the connection becomes between them.

First, we must address the correctness of the trial court's finding that the plaintiff is entitled to the presumption as set out in Tennessee Code Annotated § 7-51-201(a)(1). We quote the pertinent part of the statute:

Whenever the state of Tennessee, or any municipal corporation or other political subdivision thereof that maintains a regular law enforcement department manned by regular and full-time employees and has established or hereafter establishes any form of compensation to be paid to such law enforcement officers for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of such law enforcement officers caused by hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (*unless the contrary is shown by competent medical evidence*) to have occurred or to be due to accidental injury suffered in the course of employment. (emphasis added).

In *Krick v. City of Lawrenceburg*, 945 S.W.2d 709 (Tenn. 1997), a case similar to this one, the Supreme Court, in considering the application of the above statute, stated:

In order to overcome the presumption, "there must be affirmative evidence that there is not a substantial causal connection between the work of the employee so situated and the occurrence upon which the claim for benefits is based."

*Id.* at 712 (quoting *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995)).

Both parties refer to the plaintiff's "heart attack" in their briefs, but the trial court simply termed the injury as a "heart problem." In reviewing the medical records and testimony, we find that the plaintiff did not suffer from a heart attack but had advanced and long-standing coronary artery disease. Dr. Phillips, the plaintiff's cardiologist at the time he was admitted with chest pain on June 6, testified that the plaintiff did not have a heart attack but was in danger of having one had the surgery not been performed on an emergency basis. This was confirmed by Dr. Spalding's testimony of why he performed an emergency bypass on the plaintiff. Dr. Milnor, an evaluating cardiologist who did not examine the plaintiff, stated that the plaintiff had a heart attack on June 7, 1996, but Dr. Milnor could not point to any evidence in the medical records to substantiate this. Dr. Milnor later classified the plaintiff's symptoms as a condition less than a heart attack. Dr. Humphreys, a cardiologist who examined the plaintiff after his surgery, made several references to the plaintiff's "infarction" occurring on June 6, but he was never asked if the

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<sup>1</sup>Dr. Milnor described intermediate coronary syndrome as angina that persists over approximately thirty (30) minutes in duration with transient changes on the electrocardiogram and abnormalities in blood enzymes showing some destruction of tissue. This condition is in-between angina and an acute myocardial infarction in severity.

plaintiff actually had a heart attack and on what basis he would give an affirmative answer.

Heart attacks are usually compensable when they immediately follow a specific, acute or stressful event. *Krick*, 945 S.W.2d at 713. However, the plaintiff's own expert witness, Dr. Milnor, testified that there was nothing in the plaintiff's medical records to indicate that the plaintiff suffered a heart attack on June 3 after the bomb scare. The preponderance of the evidence shows that the plaintiff did not have a heart attack, but experienced symptoms of his disease in the form of angina. The bomb scare may have precipitated the angina attack on the evening of June 3; however, the plaintiff was at home several days later changing a heater hose on a hot day when he began to have the symptoms that sent him to the hospital. We find that the plaintiff's alleged injury is coronary artery disease, rather than a heart attack. Therefore, we must examine the record to see if the statutory presumption of causation has been rebutted with regards to the plaintiff's coronary artery disease.

From our review of the medical evidence, we find the presumption of causation in § 7-51-201(a)(1) was rebutted by competent medical evidence. The testimonies of Drs. Garey, Phillips, Spalding, and Humphreys are affirmative evidence that the plaintiff's coronary artery disease was not caused by work-related stress; however, the competent testimony of one doctor is enough to rebut the presumption, so we will examine the testimony of Dr. Phillips, one of the treating cardiologists. He testified that the plaintiff's coronary artery disease was not caused by job-related stress but that the plaintiff's family history and low HDL level had contributed to the development of his disease. Dr. Phillips' catheterization report shows that the plaintiff's left anterior descending artery was 80 percent blocked and his right coronary artery was 95 percent blocked. Drs. Garey and Humphreys testified that this long-standing coronary artery disease developed over a number of years. This evidence rebuts the statutory presumption that the plaintiff's heart disease was job-related, and we reverse the trial court's finding that the presumption applies.

Once the presumption is rebutted by the defendant, it falls away, and the plaintiff must prove by a preponderance of the evidence that his condition is work-related and permanent. Dr. Garey testified that the plaintiff's employment did not cause him to develop cardiovascular disease and that the bomb scare incident did not advance the underlying condition. He also did not restrict the plaintiff's activities or give him an impairment rating. Likewise, Dr. Phillips, plaintiff's cardiologist, testified that the plaintiff's coronary artery disease was not caused by his employment and did not place work restrictions on the plaintiff. Dr. Phillips did not believe that the bomb scare incident caused the plaintiff's

angina symptoms that sent him to the hospital on June 6. Dr. Spalding, plaintiff's surgeon, opined that the plaintiff's heart disease was not work-related and did not restrict the plaintiff's work activities once he recovered from the bypass surgery. Dr. Humphreys, plaintiff's follow-up cardiologist, also found no connection between the plaintiff's underlying disease and his employment as a deputy sheriff. The essence of Dr. Humphreys' testimony was that the bomb scare incident probably did not precipitate the plaintiff's symptoms on June 6. The only doctor to find a connection between the plaintiff's employment and his coronary artery disease was Dr. Milnor, who did not examine or talk to the plaintiff.

In our *de novo* review, we find that the evidence preponderates against a finding that the plaintiff's cardiac disease arose in the course and scope of his employment. The medical evidence does not establish the necessary link between the plaintiff's job duties or the bomb scare incident and his coronary artery disease, which necessitated the bypass surgery. The disease developed slowly over time and manifested itself on June 3 and 6 as angina, which is a symptom of the disease and not a disease itself. The plaintiff's alleged disability stems from his coronary artery disease and not from angina. The medical evidence also preponderates against a finding of a permanent impairment, as none of the treating physicians restricted the plaintiff's work activities. In addition, Dr. Garey and Dr. Humphreys both testified that plaintiff's post-surgery complaints of chest pain in February, 1997, were caused by anxiety and were not cardiac-related.

Therefore, we find that the evidence preponderates against the findings of the trial court and reverse the judgment of the trial court. The plaintiff's complaint is hereby dismissed. Costs of this appeal are to be paid by the plaintiff.

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L. T. LAFFERTY, SENIOR JUDGE

CONCUR:

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JANICE M. HOLDER, JUSTICE

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F. LLOYD TATUM, SENIOR JUDGE

